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Majlis Peguam Malaysia v Norsiah bt Ali

B COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(A)-2254–11 OF 2018
HAMID SULTAN, HANIPAH FARIKULLAH AND KAMALUDIN MD SAID JJCA
18 NOVEMBER 2019

C

Legal Profession — Disciplinary Board ('DB') — Complaint against solicitor to DB — Whether DB's decision to strike lawyer out from Rolls of Advocates and Solicitors over a misconduct in conveyancing transaction unduly harsh — Lawyer failed to use purchase price to redeem property from financier because purchase price D *insufficient to also settle debt vendor owed developer for administrative and other expenses — Whether no criminal element involved in the case and lawyer had remedied wrong by paying complainant restitution amount exceeding purchase price of property — Whether given nature of misconduct High Court rightly set aside DB's decision and suspended lawyer from practice for four years — Whether* E *High Court's decision properly took into account principles of sentencing based on facts and circumstances of the case*

The Disciplinary Board ('DB') under the Legal Profession Act 1976 ruled that the respondent ('Norsiah') be struck off the Rolls of Advocates and Solicitors of F the High Court of Malaya ('the Rolls') and that she pay RM58,800 as restitution to the complainant in a conveyancing transaction in which she had acted for the buyer. The transaction involved the purchase of a property for RM58,800 out of which sum RM54,000 was to have been paid to redeem the property from the financier ('Ambank') and the balance paid to the vendor. The G vendor was paid but Norsiah failed to redeem the property because, according to her, the funds were insufficient as there were other administrative and maintenance fees that the vendor owed the property's developer. When the sale transaction failed to be completed even after five years, Norsiah's client lodged a complaint with the DB which, after hearing evidence, found Norsiah guilty H of professional misconduct and decided as aforesaid. The High Court allowed Norsiah's appeal, wholly set aside the DB's decision and ordered that Norsiah be suspended from practice for four years. The High Court found that the DB had failed to consider the fact that Norsiah's misconduct was only in relation to her failure to redeem the property from Ambank; that there was no criminal I element involved, that she was remorseful over her conduct and had remedied her wrong by paying in restitution more than the full amount of the purchase price. The court found that the DB's decision to strike Norsiah off the Rolls was 'manifestly harsh' and noted that even in a case where a lawyer had

misappropriated RM7m belonging to clients in a transaction, the DB's decision that he be struck off the Rolls was replaced by the Federal Court with a suspension from practice for five years. In the instant appeal against the High Court's decision, the appellant called for the DB's decision to be restored because Norsiah's misconduct was serious and involved a breach of trust.

Held, dismissing the appeal:

(1) The decision of the High Court judge was not plainly wrong or perverse nor was the rule of law compromised, taking a holistic view of the facts of this case as well as the principles of sentencing. On the facts of the case, this was not a fit and proper case that warranted appellate intervention (see para 9).

(2) In attempting to push for a harsh sentence, the appellant had missed the humanitarian aspect. The DB's order to provide the harshest sentence to an advocate on the present facts and to seek perfect idealism in a society of purported compromised values was not realistic. Although the rule of law might collapse in an environment of endemic liars, thieves, kleptocrats, etc, that did not mean the court had to impose the harshest punishment. Case law did not suggest that per se (see para 8(d)).

(3) The appellant had placed an idealistic and scientific submission related to social order and humanity. But in an environment of purported compromised integrity in all institutions and social life itself, a conscientious judge had the great task of evaluating the pros and cons of sentencing and its effect on the person, family, public purse, etc. Idealistic and scientific submission and sentence might be good in a community of rational people, unbiased adjudicators, inclusive of tribunal or disciplinary boards, lawyers, etc, and also when the motion was moved fairly and justly with no element of purported fixing, etc. From the daily reading of news, these ideals were indeed absent and, consequently, a conscientious judge had to take into account many relevant considerations primarily based on the person who had been found guilty and, as far as practical, move towards a rehabilitative form of punishment as the first consideration. Only if the circumstance warranted it should harsher punishment be considered and imposed. This aspect of rehabilitative punishment was now the norm in most civilised countries and was also reflected in the Legal Profession Act 1976 and a number of cases related to it (see para 8(a)).

[Bahasa Malaysia summary

Lembaga Tatatertib ('LT') di bawah Akta Profesion Undang-Undang 1976 memutuskan bahawa responden ('Norsiah') dipotong daripada Daftarai sebagai Peguambela dan Peguamcara Mahkamah Tinggi Malaya ('Daftarai tersebut') dan beliau membayar RM58,800 sebagai ganti rugi kepada pengadu

dalam suatu urusan pindahmilik hartanah di mana beliau bertindak untuk pembeli. Transaksi tersebut melibatkan pembelian suatu hartanah sebanyak RM58,800 yang mana jumlah RM54,000 sepatutnya telah perlu dibayar untuk menebus hartanah daripada pembiaya ('Ambank') dan baki yang perlu dibayar kepada penjual. Penjual telah dibayar tetapi Norsiah gagal menebus hartanah tersebut kerana, menurut beliau, dana tersebut tidak mencukupi kerana terdapat fi pentadbiran dan penyelenggaraan lain yang perlu dibayar oleh penjual kepada pemaju hartanah tersebut. Apabila urusniaga jual beli gagal dimuktamadkan walaupun setelah lima tahun, anak guam Norsiah membuat aduan kepada LT, setelah mendengar keterangan, mendapati Norsiah bersalah melakukan salah laku profesional dan memutuskan seperti yang disebutkan di atas. Mahkamah Tinggi membenarkan rayuan Norsiah, dengan sepenuhnya mengetepikan keputusan LT dan memerintahkan supaya Norsiah digantung daripada beramal selama empat tahun. Mahkamah Tinggi mendapati bahawa LT telah gagal untuk mempertimbangkan fakta bahawa salah laku Norsiah hanya berkaitan dengan kegagalan beliau untuk menebus hartanah tersebut dari Ambank; bahawa tidak ada elemen jenayah yang terlibat, bahawa dia menyesal atas kelakuannya dan telah memperbaiki kesalahannya dengan membayar dalam ganti rugi lebih daripada jumlah penuh harga pembelian. Mahkamah mendapati bahawa keputusan LT untuk memotong Norsiah daripada Daftarai adalah 'secara nyatanya keras' dan menyatakan bahawa walaupun dalam kes di mana seorang peguam telah menyalahgunakan RM7 juta kepunyaan pelanggan dalam urus niaga, keputusan DB bahawa dia dipotong dari Daftarai digantikan oleh Mahkamah Persekutuan dengan penggantungan dari beramal selama lima tahun. Dalam rayuan segera terhadap keputusan Mahkamah Tinggi, perayu memohon keputusan LT dikekalkan kerana salah laku Norsiah adalah serius dan melibatkan pecah amanah.

Diputuskan, menolak rayuan tersebut:

(1) Keputusan Hakim Mahkamah Tinggi tidaklah terkhilaf atau tidak jelas dan peraturan undang-undang telah disalah tafsir, mengambil pandangan holistik mengenai fakta kes ini serta prinsip hukuman. Berdasarkan kepada fakta kes tersebut, ini bukan kes yang sesuai dan wajar untuk mewajarkan campurtangan mahkamah rayuan (lihat perenggan 9).

(2) Dalam usaha untuk memohon hukuman yang lebih keras, perayu telah menolak aspek kemanusiaan. Perintah LT untuk membenarkan hukuman yang paling keras kepada seorang pegumcara dalam fakta-fakta kes ini dan untuk mencari idealisme yang sempurna dalam masyarakat yang dianggap nilai-nilai kompromi adalah tidak realistik. Walaupun peraturan undang-undang mungkin akan gagal

dalam lingkungan pembohong endemik, pencuri, kleptokrat, dan lain-lain, ianya tidak bermakna mahkamah harus mengenakan hukuman yang keras. Nas undang-undang tidak mencadangkan sebegitu (lihat perenggan 8(d)).

(3) Perayu telah meletakkan penghujahan idealistik dan saintifik yang berkaitan dengan ketertiban sosial dan kemanusiaan. Tetapi dalam persekitaran yang diakui integriti dalam semua institusi dan kehidupan sosial itu sendiri, seorang hakim yang bijaksana mempunyai tugas yang besar untuk menilai kebaikan dan keburukan hukuman dan kesannya terhadap seseorang, keluarga, kepentingan awam, dan lain-lain. Penghujahan idealistik dan saintifik dan hukuman mungkin berkesan dalam komuniti masyarakt yang rasional, tidak berat sebelah, yang mempunyai tribunal atau lembaga tatatertib, peguam, dan lain-lain, dan juga apabila usul tersebut dibawa dengan adil dan saksama tanpa elemen yang ditetapkan, dan lain-lain. Dari pembacaan berita harian, idea ini sememangnya tidak wujud dan, oleh itu, seorang hakim yang bijaksana perlu mengambil kira banyak pertimbangan yang berkaitan terutamanya berdasarkan orang yang didapati bersalah dan, secara praktikal, mengusulkan ke arah bentuk hukuman pemulihan sebagai pertimbangan pertama. Sekiranya keadaan itu perlu, maka hukuman yang lebih berat akan dipertimbangkan dan dikenakan. Aspek hukuman pemulihan sekarang adalah norma di negara-negara yang paling beradab dan juga terlihat dalam Akta Profesion Undang-Undang 1976 dan beberapa kes yang berkaitan dengannya (lihat perenggan 8(a)).]

Cases referred to

A Solicitor; Re [1936] 1 MLJ 192 (refd)
Bolton v Law Society [1994] 2 All ER 486, CA (refd)
Choong Yik Son v Majlis Peguam Malaysia [2008] 7 MLJ 215; [2008] 10 CLJ 101, HC (refd)
Datuk M Kayveas & Anor v Bar Council [2013] 5 MLJ 640; [2013] 7 CLJ 533, FC (refd)
David Abraham Samson Paul v Syed Shahir bin Syed Mohamud (suing in his capacity as the President of the Malaysian Trades Union Congress) & Ors [2012] 6 MLJ 68; [2012] 7 CLJ 830, CA (refd)
Dinesh Kanavaji a/l Kanawagi & Anor v Ragumaren a/l N Gopal (Majlis Peguam, intervener) [2018] 2 MLJ 265; [2018] 2 CLJ 1, FC (refd)
Gana Muthusamy v LM Ong & Co [1998] 3 MLJ 341; [1998] 4 CLJ 878, CA (refd)
Iszam Kamal bin Ismail v Prestij Bestari Sdn Bhd (Bar Council Malaysia, intervener) [2018] 5 MLJ 536; [2017] 10 CLJ 417, CA (refd)
Leken @ Delem ak Gerik (M) v Public Prosecutor [2007] 3 MLJ 730; [2007] 8 CLJ 158, HC (refd)

Majlis Peguam Malaysia v Hari Krishnan a/l Jeyapalan [2017] 1 MLJ 770; [2017] 4 CLJ 225, CA (refd)
Majlis Peguam Malaysia v Lim Yin Yin [2018] MLJU 986, CA (refd)
Ong Keh Keong v Lembaga Tatatertib Peguam-Peguam [2017] MLJU 1131; [2017] 1 LNS 1528, HC (refd)
Song Teik Kim v Lina ak Dimbad & Anor [2020] 1 MLJ 658; [2019] 1 LNS 192, CA (refd)
Vasandi a/p Kandasamy v Pasupathy a/l Suburamaniam [2015] MLJU 406; [2015] 1 LNS 702, HC (refd)

Legislation referred to

Courts of Judicature Act 1969 ss 69, 96
Legal Profession Act 1976

Appeal from: Originating Summons No WA-17D-2–01 of 2018 (High Court, Kuala Lumpur)

KN Geetha (GS Saran with him) (GK Ganesan) for the appellant.
Razlan Hadri (Danny Soong Hou Ming with him) (Gan, Ho & Razlan Hadri) for the respondent.

Hamid Sultan JCA (delivering judgment of the court):

[1] The appellant's appeal against the decision of the learned High Court judge who had set aside the Disciplinary Board's order which struck out the respondent's off the Roll of an Advocate and Solicitor and substituted it with an order that the respondent be suspended from practice as an Advocate and Solicitor for a period.

[2] The appellant and respondent had relied on the following cases:

(a) *Dinesh Kanavaji a/l Kanawagi & Anor v Ragumaren a/l N Gopal (Majlis Peguam, intervener)* [2018] 2 MLJ 265; [2018] 2 CLJ 1;

(b) *Choong Yik Son v Majlis Peguam Malaysia* [2008] 7 MLJ 215; [2008] 10 CLJ 101;

(c) *Datuk M Kayveas & Anor v Bar Council* [2013] 5 MLJ 640; [2013] 7 CLJ 533;

(d) *Re A Solicitor* [1936] 1 MLJ 192;

(e) *Bolton v Law Society* [1994] 2 All ER 486;

(f) *David Abraham Samson Paul v Syed Shahir bin Syed Mohamud (suing in his capacity as the President of the Malaysian Trades Union Congress) & Ors* [2012] 6 MLJ 68; [2012] 7 CLJ 830;

(g) *Majlis Peguam Malaysia v Lim Yin Yin* [2018] MLJU 986;

(h) *Gana Muthusamy v LM Ong & Co* [1998] 3 MLJ 341; [1998] 4 CLJ 878;

(i) *Vasandi a/p Kandasamy v Pasupathy a/l Suburamaniam* [2015] MLJU 406; [2015] 1 LNS 702;

(j) *Majlis Peguam Malaysia v Hari Krishnan a/l Jeyapalan* [2017] 1 MLJ 770; [2017] 4 CLJ 225;

(k) *Iszam Kamal bin Ismail v Prestij Bestari Sdn Bhd (Bar Council Malaysia, intervener)* [2018] 5 MLJ 536; [2017] 10 CLJ 417;

(l) *Ong Keh Keong v Lembaga Tatatertib Peguam-Peguam* [2017] MLJU 1131; [2017] 1 LNS 1528; and

(m) *Song Teik Kim v Lina ak Dimbad & Anor* [2020] 1 MLJ 658; [2019] 1 LNS 192.

[3] Learned counsel for the appellant has summarised the issues for consideration related to sentencing as follows:

> Q-1 it has been determined that an advocate and solicitor is dishonest, and has committed misconduct through misappropriation of client's monies (breach of trust), whether it amounts to misconduct sufficient to merit the advocate and solicitor being struck off the Rolls?
>
> Q-2: whether act of the late repayment of the monies misappropriated by the solicitor a mitigating factor sufficient to excuse the said solicitor from being struck off the Rolls as opposed to a mere suspension;
>
> Q-3: whether the considerations for sentencing in disciplinary proceedings are aimed to protect the public, deter the other practitioners, or limited to punishing the errant solicitor according to his circumstances?

[4] It must be noted that questions posed to the court in the style of 'Hardtalk' is not the courteous approach to address the bench. The subject matter also relates to sentencing where the court has a wide discretion based on gravity as well as other established principles.

BRIEF FACTS AND GROUNDS

[5] The brief facts and grounds of the case placed in a rudimentary manner before us is repeated to save court's time and it reads as follows:

> 1. The Applicant in this case filed an originating summons to set aside the decision of the Disciplinary Board dated 15 December 2017 pursuant to sub-s 103E (4) of the Legal Profession Act 1976 in which the Disciplinary

Board had ordered the applicant to make restitution to the complainant in the sum of RM58,800. It was further ordered that the applicant be struck off the Roll of the Advocates & Solicitor of High Court of Malaya with effect 21 days from the date of the order.

2. The applicant was retained by one Zainab bt Hamzah to handle the purchase of a property from Mohamad bin Ismail at the purchase price of RM58,000 and the property was assigned to AmBank (M) Bhd.

3. On 12 April 2011, a sale and purchase agreement was signed by both parties and the full purchase price in the sum of RM58,800 has been paid but no receipt of payment was issued by the applicant. Out of this purchase sum, RM4,800 was paid to the vendor. The remaining RM54,000 was to be used to redeem the property from AmBank (M) Bhd.

4. However, the applicant had failed to redeem the property and the reasons given by the applicant are that there were outstanding administrative and maintenance fees owed by the vendor to the developer and balance amount of RM54,000 in the applicant's client account was insufficient to redeem the property.

5. As the Applicant failed to execute the sale transaction after the lapsed of five years, on 9 August 2016, a letter of complaint was sent to the Advocate & Solicitors Disciplinary Board against the applicant.

6. After having heard the evidence by the relevant parties, the Disciplinary Committee finds that the Applicant has committed professional misconduct against the complainant and thereafter, on 15 December 2017 the Disciplinary Board made its decision and grounds of its decision was informed to the applicant by letter dated 26 February 2018.

7. Applicant submitted: The sentence to struck off the roll of Advocate and Solicitor by the Disciplinary Board is excessive, harsh and disproportionate. It was argued that there is no criminal element in the Applicant's case but misconduct for failing to pay the balance sum to the assignee bank, the applicant also had remedied the wrong committed by paying more than the full amount of the purchase price of the property.

8. Intervener contended: The misconduct committed by the Applicant is serious and it involved a breach of trust. The sentence by the Disciplinary Board is appropriate and should not be disturbed by this Court.

9. High Court: The applicant's application is allowed and the decision of the Disciplinary Board in striking off the Roll of Advocate and Solicitor of the applicant and the order to make restitution to the complainant in the sum of RM58,900 is set aside.

Grounds of decision of High Court

1. The High Court is guided by the facts of the case in *Dinesh Kanavaji a/l*

Kanawagi & Anor v Ragumaren a/l N Gopal (Majlis Peguam, intervener) [2018] 2 MLJ 265. In the present case, the High Court found that the Disciplinary Board had failed to consider these matters:

i. The applicant's misconduct was in regard to her failure to pay the balance sum to the assignee bank and there is no criminal element attributed to the applicant.

ii. The applicant has repaid more than the full amount of the purchase price.

iii. The applicant admitted that she has committed professional misconduct and entered into a consent judgment with the purchaser with regard to a civil suit filed by the purchaser.

iv. The applicant is remorseful and had remedied the wrong committed.

2. The conduct of the applicant for not paying the balance sum to the assignee bank is poles apart from the conduct of the first appellant in *Dinesh Kanavaji*'s case where he misappropriated a sum of RM7m belonging to several 'orang asli' and yet the sentence to struck off the Roll of Advocate and Solicitor was replaced by the Federal Court with suspension of five years.

3. Therefore, the High Court finds that the sentence meted out by the Disciplinary Board in the present case is manifestly harsh.

4. The sentence by the Disciplinary Board is hereby substituted with a sentence of suspension for a period of four years with effect from 15 December 2017.

[6] The Memorandum of Appeal reads as follows:

1 Bahawa Hakim Mahkamah Tinggi Malaya telah terkhilaf dari segi undang-undang dan fakta-fakta apabila Hakim Mahkamah Tinggi Malaya gagal mengambil kira bahawa kelakuan Responden yang telah salah guna wang anakguam dalam akaun anakguam ('Client's account') adalah serius ('grave impropriety');

2 Bahawa Hakim Mahkamah Tinggi Malaya telah terkhilaf dari segi undang-undang dan fakta-fakta apabila Hakim Mahkamah Tinggi Malaya gagal mempertimbangkan kesan-kesan pecah amanah dan tanggungjawab Responden sebagai seorang pemegang amanah dan 'stakeholder' adalah terjumlah sebagai ketidakjujuran yang sebenar ('actual dishonesty')' dan adalah tidak relevan sama ada jumlah wang yangterlibat adalah kecil atau besar;

3 Bahawa Hakim Mahkamah Tinggi Malaya telah terkhilaf dari segi undang-undang dan fakta-fakta apabila Hakim Mahkamah Tinggi

Malaya mengetepikan Perintah Lembaga Tatatertib Peguam-Peguam tanpa mengambil kira pengakuan daripada Responden beliau sendiri dalam Penghakiman Persetujuan yang dimasukkan antara Responden dan Pengadu semasa pendengaran yang diadakan di hadapan Jawatankuasa Tatatertib Peguam-Peguam bahawa Responden sendiri adalah bersalah atas kecuaian profesional dalam menyempurnakan transaksi jual beli;

4 Bahawa Hakim Mahkamah Tinggi Malaya telah terkhilaf dari segi undang-undang dan fakta-fakta apabila Hakim Mahkamah Tinggi Malaya gagal mengambil kira bahawa alasan-alasan yang diberikan oleh Responden semasa Mahkamah Tinggi Malaya adalah tidak disokong oleh apa-apa keterangan;

5 Bahawa Hakim Mahkamah Tinggi Malaya telah terkhilaf dari segi undang-undang dan fakta-fakta apabila Hakim Mahkamah Tinggi Malaya gagal mengambil kira bahawa Responden tidak dapat memberikan sebarang penjelasan atas kelewatan dalam membayar baki harga belian kepada Bank Assignee walaupun telah menerima dua (2) salinan Kenyataan Penebusan ('Redemption Statement');

6 Bahawa Hakim Mahkamah Tinggi Malaya telah terkhilaf dari segi undang-undang dan fakta-fakta apabila Hakim Mahkamah Tinggi Malaya gagal mengambil kira bahawa peranan Jawatankuasa Tatatertib Peguam-Peguam adalah sebagai satu badan penyiasatan yang membunyai kuasa-kuasa untuk menyiasat dan mendengar kesemua keterangan-keterangan yang berkaitan dengan aduan dan adalah berada dalam kedudukan yang lebih wajar untuk membuat keputusan ('advantageous position') atas aduan yang dibuat;

7 Bahawa Hakim Mahkamah Tinggi Malaya telah terkhilaf dari segi undang-undang dan fakta-fakta apabila Hakim Mahkamah Tinggi Malaya gagal mengambil kira bahawa keputusan berkenaan hukuman clibuat oleh Lembaga Tatatertib Peguam-Peguam yang terdiri daripada peguam-peguam dalam Lembaga Tatatertib yang berpengalaman; dan

8 Bahawa Hakim Mahkamah Tinggi Malaya telah terkhilaf dari segi undang-undang dan fakta-fakta apabila Hakim Mahkamah Tinggi Malaya tidak mengambil kira bahawa kebanyakan peguam dalam kes-kes terdahulu yang dilaporkan atas penyalahgunaan wang anak guam telah dibatalkan dari senarai daftari Peguambela dan Peguamcara. Ini merupakan hukuman yang wajar kerana sifat kesalahan yang terlibat.

[7] The learned counsel for the appellant has summarised the principles of a number of cases. We have taken the liberty to further summarise it verbatim and reproduce as follows:

No.	Case Law	Decision	Ratio	Whether principle of proportionality was applied
1.	Dinesh Kanavaji Kanawagi & Anor v. Ragumaren Gopal; Majlis Peguam (Intervener) [2018] 2 CLJ 1 (As against the 2nd Appellant, the father) (See pg 14 of the Appellant's Bundle of Authorities Vol. 1)	1. 2nd Appellant's appeal (Dinesh's father) is dismissed. Decision to strike off the 2nd appellant from the roll was affirmed. 2. 1st appellant's appeal was allowed and striking off was substituted with suspension for 5 years.	1. For the 2nd Appellant (the father):- A solicitor may be struck off the roll for an offence which has no relation to his character as a solicitor (para 28&29); 2. For the 1st Appellant (Dinesh the son):- In view of the 1st Appellant's role in the scheme, the court is of the view that proportionality should apply in meting out the sentence. (The court followed Court of Appeal decision in *Majlis Peguam Malaysia v Hari Krishnan Jeyapalan [2017] 4 CLJ 225*) para 31. His role is set out at para 10(b) where Dinesh claims to act in his personal capacity as shareholder and director of the company and that he is not a trustee. The disciplinary complaint discloses that it was Kanawagi, the father who allowed the release of the sum of RM7 million (para 8(a))	1. As against the father (2nd Appellant) the principle of proportionality was not applied as the father was the individual who released the orang asli's monies to the company. He is the main actor, just like the Respondent in the present appeal. 2. As against the son (1st Appellant) the court applied the principle of proportionality as to the 'role' of the 1st Appellant, not the quantum of the monies misappropriated. His role was describes as the director and shareholder of the company. (para 31 of judgment).

2.	Bar Malaysia v Mohd Fadli Shuib & Anor [2014] 1 LNS 1934 (See pg 30 of the Appellant's BOA Vol.2)	Complaint: Failure to release balance purchase price in a sale and purchase transaction DC: Recommended suspension of 3 months DB: Ordered that the advocate and solicitor be struck off the rolls High Court: substituted punishment with 3 months suspension Court of Appeal: Agreed with DB's punishment, ordered that the advocate and solicitor be struck off the rolls.	1. Courts rarely interfere with DB's exercise of discretion in disciplinary cases. (Reference was made to Federal Court decision in *Keith Sellar v Lee Kwang Tennakoon v. Lee Kwang [1980] 1 LNS 36[1980] 2 MLJ 191. (See pg 36 of BOA Vol.2) (See Keith Sellar at pg 45)* Dishonesty is not the only situation warranting striking off the rolls. He can be struck off if he is shown to have fallen below the standards of integrity, probity and trustworthiness. (Reference was made to *Bolton v Law Society [1994] 2 All ER 486)* (See pg 41 of BOA Vol.2)	Judges referred to a case where it was held that proportionality must not be applied. (See pg 42 BOA Vol.2) "[29] In similar vein, the Alberta Court of Appeal in *Adams v. Law Society (Alberta)* II W.W.R.288 (AB C.A) had this to say: "It is therefore erroneous to suggest that in professional disciplinary matters, the range of sanctions may be compared to penal sentences and to suggest that only the most serious misconduct by the most serious offenders warrants disbarment. Indeed, that the proposition has been rejected in criminal cases for the same reasons it should be rejected here. It will always be possible to find someone whose circumstances and conduct are more egregious than the case under consideration. Disbarment is but one disciplinary option available from a range of sanctions and as such, it is not reserved for only the very worst conduct engaged in by the very worst lawyers". (Adams v Law Society of Alberta is at pg 118 of Vol 2 of the Appellant's BOA -see pg 122 para 11 for the above passage)

3.	Mokhtar Ngah v Yang Dipertua Majlis Daerah Hulu Terengganu, Majlis Peguam (Intervener) [2015] 1 LNS 1438 (See pg 49 of BOA Vol. 2)	Complaint: Misappropriation of client monies as legal fees and disbursements without consent of client. Client was Majlis Daerah Hulu Terengganu DC: Recommended that the Appellant be struck off the roll DB: Ordered that the Appellant be struck off the rolls High Court: Dismissed Appellant's appeal Court of Appeal: Affirmed HC decision.	1. Court takes a serious view of improper dealings with client's monies. Severe sanction of striking off the Rolls is justified.(para 36 pg 62) 2. The court should only interfere with DB's discretion in 'rare and exceptional' circumstances. 3. Interest of public is paramount. (Pg 63)	No.

4.	Majlis Peguam Malaysia v Lim Yin Yin [2018] MLJU 986 (See Appellant's BOA Vol.1 pg 128)	Complaint: Failure to release balance purchase price DC: (there was no investigation by DC as Respondent agreed for it to be dealt with summarily) DB: Ordered that the Respondent be struck off the rolls HC: Substituted sentence with 3 years imprisonment COA: Allowed Bar Council's appeal. Affirmed DB's decision.	1. When a person engages and advocate and solicitor, he places his confidence, good faith, reliance and trust in the advocate and solicitor, (pg 130 of Appellant's BOA Jilid 1) 2. A solicitor is also an agent with fiduciary duties (para 16 of judgment) 3. A solicitor must pay the client from the client's account without delay under rule 3(1) of the Solicitors' Account Rules (para 19); 4. Breach of an undertaking undermines the public confidence in	No.

			the legal profession (para 31). 5. A developed profession lays down and maintains standards of professional conduct for its members, (para 35) DB is vested with the power to strike the solicitor off the rolls. (The court referred to Bolton v Law Society and Re A Practitioner) 6. Para 36: Where a solicitor had acted dishonestly, the court will order that he be struck off the Roll. Even if he has not been shown to have acted dishonestly, but his conduct has fallen below the standards of integrity probity and trustworthiness, he will be struck off the Roll (para 36) 7. The Respondent lacks qualities of character and trustworthiness as an advocate and solicitor (para 37)	

5.	David Abraham Samson Paul v Syed Shahir Syed Mohamud & Ors [2012] 7 CLJ 830 (See pg 113 Vol.1 of the Appellant's BOA)	Complaint: Solicitor retained client's monies in the client's account for legal fees and refused to release it to the client. DC: Recommended that the Appellant be struck off the Rolls; DB: Affirmed the DC's recommendation HC: Affirmed DB's decision	1. Solicitor had offset his legal fees without notifying the client or delivering any bill of costs (Held no.2) Pg 114-115 of Appellant's BOA no.1 2. There was an element of deceit and dishonesty justifying the punishment, (para 35-37) 3. A punitive and deterrent punishment was required (para 35-37) 4. The appropriateness of punishment not only involves consideration of interest of the appellant but also the wider interest of the public and the profession (para 30) 5. Absence of finding of dishonesty does not make the sentence of striking off excessive, (para 35)	No.

6.	Re A Solicitor [1936] MLJ 192 See pg 100 of the Appellant's BOA Vol.1	Complaint: Misuse of client's funds for a sum of $302.69. Singapore Bar Committee applied for the advocate and solicitor to be struck off the rolls. Decision: the Respondent was struck off the rolls.	1. The solicitor had used for his own purpose money of his client which had come into his hands in his capacity as that client's solicitor and was unable to pay when required by the client (pg 101 of Vol.1 of Appellant's BOA) 2. It was a grossly improper misconduct in the discharge of his personal duty. 3. The solicitor may apply to be readmitted after a lapse of time (pg 101)	No.

7.	Choong Yik Son V. Majlis Peguam Malaysia [2008] 10 CLJ 101 (pg 43 of Appellant's BOA Vol.1)	Complaint: Advocate and solicitor withdrew from client's account to defray medical bill and overheads DC: Recommended that the Appellant be struck off the rolls.	1. The withdrawals from the client's account was not permitted under the Solicitors' Account Rules even if it was to defray medical expenses; (para 14-17) 2. It made no difference that the Appellant eventually repaid the sum to the client. 3. Notwithstanding circumstances, the act committed was nothing short of dishonesty and fraudulent conduct (para 20-21) The net is thrown wider where there is a breach of the Solicitors' Account's Rules.	No.
8.	Nora Hayati Ismayatim v Sam Sau May; Majlis Peguam Malaysia (Intervener) [2017] 1 LNS 907 See Pg 65 of Appellant's BOA Vol.2	Complaint: Failure to honour client's account cheque Recommendation of Disciplinary Committee (DC): Suspension >12 months DB: Ordered Appellant to be struck off the roll and ordered restitution.	1. Respondent need not be the Appellant's client for the Appellant to honour her undertaking. (pg 72) para 28 2. The undertaking was clear and unambiguous. (pg 72-73) 3. Sufficient opportunity was given to the Appellant to be heard. (pg 71)	No.
9.	Jaswinder Kaur Gurbachan Singh v Mokhtar Singh Lai Singh; Majlis Peguam Malaysia (Intervener) [2017] 1 LNS 591 (See pg 79 of Appellant's BOA Vol.2)	Complaint: Failure to pay balance purchase price to Respondent, the vendor. A few months after complaint was lodged, the Appellant released the balance to the vendor. DC: Recommended Appellant to be struck off the roll DB: Agreed with DC's recommendation High Court: Dismissed Appellant's appeal	1. Appellant's conduct amounted to grave impropriety and brought the legal profession to disrepute.(pg 88) 2. DB's punishment is not unreasonable (pg 87-88) 3. Sufficient opportunity was granted to the Appellant to be heard.(pg 85)	No.

10.	Chan Yiew Hock v Koh Hong Toong & Anor; Majlis Peguam Malaysia (Intervener) [2011] 4 CLJ 160 (See pg 90 of Appellant's BOA Vol 2)	Complaint: Misappropriation of client's monies in a sale and purchase transaction (5 charges) DC: (not mentioned) DB: Ordered that the advocate and solicitor be struck off the rolls for charge no.3, fine for charge no.1,2 and 4 and reprimanded for charge no.5 High Court: Dismissed the appeal	1. In disciplinary matters, the profession and its members are the best judge of the standards (pg 105) 2. Converting monies paid by the purchaser to his own use is deemed as misconduct, (pg 105) 3. Objective of punishment is two-fold : (I)punitive element; and (2) to sustain public confidence in the integrity of the legal profession, (pg105)	No.

11.	Vasandi Kandasamy v Pasupathy Subramaniam & Intervener [2015] 1 LNS 702 See pg 139 of the Appellant's BOA Vol.1	Complaint: Appellant failed to release the balance purchase price to the vendor in the sum of RM44,500.00. DC : Recommended that the Appellant be struck off the rolls DB: Affirmed DC's recommendation. HC: Dismissed Appellant's appeal.	1. Despite being given sufficient opportunity, Appellant did not explain her conduct (pg 160 para 13.7) 2. Bar Council has a duty to ensure that its members maintain a high standard of professional conduct in the legal profession (para 13.10) 3. The Appellant had fallen short of the standard required of her in protecting the interest of the Respondent, (pg 162) 4. The court can disturb the findings of a DB if DB erred in principle, overlooked, misconceived or disregarded a material fact or failed to act judicially, in the rarest of cases, (pg 163-164)	No.

12.	Law Society of Singapore v Vardan VCS [1999] SGHC 55 See pg 200 of the Appellant's BOA Vol.3	Complaint: Unauthorized withdrawal of 1 his client's funds Law Society: Show cause why he should not be dealt with under s. 83 of Legal Profession Act. High Court: Struck off the Rolls as Advocate and Solicitors	1. Unauthorized withdrawal of his client's funds implied a defect of character which made the i.e. Respondent unfit for his profession. (pg 203) Interest of public and the legal profession required that member of the legal profession should observe the highest standards of conduct	No.

13.	J.S Jadhav v Mustafa Haji Mohammed Yusuf and Others (1994) 1 MLJ 34 (S.C) See pg 210 of the Appellant's BOA Vol.3	Complaint: Solicitor withdrew the monies from the client's account for 14 years and illegally retained the amount.	In cases involving misappropriation of clients' monies, the appropriate sentence is to be struck off the rolls. Referred to M Veeravbhadra Rao v Tek Chand M Veeravbhadra Rao AIR SC 28 Supp 571 where it was observed as follows:- "Legal profession is monopolistic in character and this monopoly itself inheres certain high traditions which its members are expected to upkeep and uphold... The bar is not a private guild, like that of 'barbers', butchers and candle stick makers' but by bold contract, a public institution committed to public justice and pro bono public service. The grant of a monopoly licence to practice law is based on 3 assumptions:-	No.

			1. There is a socially useful function for the lawyer to perform; 2. The lawyer is a professional person who will perform that function; and 3. His performance as a professional person is regulated by himself and more formally, by the profession as a whole. The central function that the legal profession must perform is nothing less than the administration of justice. (See pg 212)	

14.	Law Society of High Singapore v Rasif David [2008] SGHC 14 See pg 214 of the Appellant's BOA Vol.3	Complaint: Unauthorized and improper withdrawals of moneys from client's account by lawyer Law Society: show cause order under s.83(i) of the Legal Profession Act High Court: Struck off the Rolls as Advocate and Solicitors	1. The Respondent's misappropriation of his clients' money is sufficient ground to strike him off the Roll of Advocate and Solicitors 2. It is not a question of punishing the solicitor. A further consideration must be what course should the court take to protect the public and to register its disapproval of the conduct of the solicitor (pg 221) 3. If one does not understand the reasons of the tribunal, striking out may seem harsh (pg 222)	No

			4. To maintain public confidence in the integrity of the legal profession it is necessary that those guilty are expelled (pg 222) 5. Value is more important than statutory provisions (pg 227) The Court referred to numerous cases where striking off had been applied to errant solicitors at pg 222-224)	

15.	Law Society of Singapore v Zulkifli bin Mohd Amin and another appeal [2011] SGHC19 See pg 232 of Appellant's BOA Vol.3	Complaint: Misappropriated the client's account v Law Society: show cause order under s 83(l) of the Legal Profession Act High Court: Struck off the Rolls as Advocate and Solicitors	1. The Respondent's misappropriation of his clients' money is sufficient ground to strike him off the Roll of Advocate and Solicitors 2. It is settled practice of the court that if the solicitor is found dishonest, it will almost invariably direct that his name be struck off the roll. (See pg 240 reference made to Law Society of Singapore v Tay Eng Kwee Edwin [2007] 4 SLR® 171)	No.

16.	Scott v Solicitors Regulation Authority [2016] EWHC 1256 (Admin) See pg 243 Appellant's BOA Vol.3	Complaint: The Appellant faced 5 allegations centering on his failure to cooperate with SRA, his breached of Solicitors Accounts Rules and conduct obligations and his failure properly to manage the affairs of the firms. SDT: Struck off the Rolls as Advocate and Solicitors High Court: Affirmed SDT's decision	1. A person can lack of integrity without being dishonest:- (i) Reckless as to the use of various clients' accounts; (ii) Not strictly adhering to the ethical code (See pg 251-254)	No.

[8] We have read the appeal records and the able submissions of both counsels. After giving much consideration to the appellant's counsel, we take

the view that the appeal must be dismissed. Our reasons, inter alia, are as follows:

(a) learned counsel for the appellant had placed an idealistic and scientific submission related to social order and humanity. A conscientious judge, administering criminal or quasi criminal jurisdiction, in an environment of purported compromised integrity in all institutions and social life itself has greater task to evaluate the pros and cons of sentencing and its effect on the person, family, public purse, etc. Idealistic and scientific submission and sentence may be good in a community of rational people, unbiased adjudicators inclusive of tribunal or disciplinary boards, lawyers, etc and also when the motion is moved fairly and justly with no element of purported fixing, etc. From the daily reading of news, theses ideals are indeed absent and in consequence a conscientious judge has to take into many relevant consideration primarily based on the person who had been found guilty and as far as practical move towards a rehabilitative form of punishment as first consideration and, only where the circumstance warrant, harsher punishment should be considered and imposed. This aspect of rehabilitative punishment is now a norm in most civilised countries and is also reflected under the Legal Profession Act 1976 and a number of cases related to it;

(b) as a starting point, it must be observed that the sentencing is the most difficult part of the judicial duty to a conscientious judge who has to take into consideration the accused's interest, inclusive of his family, public interest and more so, the fact when custodial sentence imposed will impinge on the state coffers and also the quality of humanity provision and safeguard in a depleted financial environment, which may not meet with humanitarian standards, etc:

Example 1: Ahmad steals a bread and Kassim steals a diamond necklace. Both being a non-violent crime. Is custodial sentence proper for both the case? Should it be a rehabilitative sentence for both or at least for Ahmad? and

Example 2: Ahmad and Kassim returned to the owner what they stole. Is custodial sentence proper for both the cases or should it be rehabilitative in nature, on humanitarian grounds, as well as to save public purse;

(c) the two examples that we have stated above, have relevance to this case and the questions posed by the learned counsel for the appellant. We must concede that the jurisprudence as to sentencing has been a harsh dictate by legislation as well as courts in cases related to criminal and/or quasi criminal offence, notwithstanding there are many unhappy humanitarian issues related to custodial sentence, so much so that now there is an attempt to amend the law to treat drug users as psychological

patient, inter alia, to reduce the overcrowding in prison as well as to provide basic facilities to prisoners which is currently inadequate as per the media reports; and

(d) the Bar Council by attempting to push for harsh sentence misses the humanitarian aspect. The Disciplinary Board's order to provide the harshest sentence to an advocate on the present fact and to seek perfect idealism in a society of purported compromised values are also not realistic. To put it mildly, it is true that the rule of law will collapse in an environment of endemic liars, thieves, kleptocrats, etc. Does that mean the judge should impose the harshest punishment? Case law does not suggest that per se (see *Leken @ Delem ak Gerik (M) v Public Prosecutor* [2007] 3 MLJ 730; [2007] 8 CLJ 158 (HC); *Iszam Kamal bin Ismail v Prestij Bestari Sdn Bhd (Bar Council Malaysia, intervener)* [2018] 5 MLJ 536; [2017] 10 CLJ 417).

[9] After having considered all the authorities submitted by the parties, we do not think that the learned judge was plainly wrong or the decision is perverse or the rule of law has been compromised, taking a holistic view of the facts of this case as well as the principles of sentencing. We also take note that it is not the policy of the court to intervene in the decision of the Disciplinary Board. On the facts of the case, this is not a fit and proper case to warrant appellate intervention.

[10] Further, it is also undesirable for this court to answer the abusive questions framed by a responsible body related to rule of law and courts should not do so like it is a case of leave to appeal to the Federal Court by posing questions of law to the Federal Court. The Court of Appeal's role here is to administer justice as per s 69 of the Courts of Judicature Act 1969 and not under s 96. This distinction is not one of an apple and orange but a marble and pumpkin.

[11] For reasons stated above, we dismiss the appeal with no order as to costs.

We hereby order so.

Appeal dismissed.

Reported by Ashok Kumar